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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERND PETZOLD and GERD DRAEGER

Appeal 2008-2337
Application 09/960,563
Technology Center 3600

Decided: September 24, 2008

Before JENNIFER D. BAHR, DAVID B. WALKER, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Bernd Petzold and Gerd Draeger (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 16-20, 22-25, and 27-29, which are the only pending claims. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellants' claimed invention is directed to a navigational system (Specification 1:3-4). Claim 25, reproduced below, is the only independent claim.

25. A navigational system, comprising:

a calculation unit configured to calculate a first route from a starting point to a destination, the calculation unit further configured to calculate at least one second route different from the first route, from the starting point to the destination;

a reproducing device configured to reproduce the calculated first route and the at least one second route for selection by a user; and

a communications unit configured to receive information regarding traffic disruptions on the calculated first route and the at least one second route, the reproducing device configured to reproduce the information regarding the traffic disruptions;

wherein the reproducing device is configured to reproduce the traffic disruptions one of: a) in the form of isolines; and b) in the form of an isographic diagram.

The Rejection

Appellants seek review of the Examiner's rejection of claims 16-20, 22-25, and 27-29 under 35 U.S.C. § 102(b) as anticipated by Mutsuga (US 5,911,773, issued Jun. 15, 1999).

THE ISSUES

Appellants contend that Mutsuga does not anticipate the subject matter of claim 25 because:

- (1) Mutsuga fails to teach “a reproducing device configured to reproduce the calculated first route and the at least one second route for selection by a user; . . . the reproducing device configured to reproduce the information regarding the traffic disruptions [on the calculated first route and the at least one second route].” (emphasis in original; text in brackets not included in claim 25) (Appeal Br.¹ 6); and
- (2) Mutsuga does not teach display of isolines or an isographic diagram (Appeal Br. 4-5).

Appellants’ first argument is grounded on the premise that claim 25 requires *simultaneous* display of a first route and a second route (Appeal Br. 5). Appellant’s second argument is grounded on the premise that claim 25 requires display of traffic disruptions in the form of either isolines or an isographic diagram. Therefore, the issues raised by Appellants turn on claim construction, and in particular, what is required of the claimed “reproducing device.”

FINDINGS OF FACT

FF1 Appellants’ Specification describes reproducing device 700 as including “an optical display device and/or acoustic reproducing

¹ We refer herein to the Appeal Brief (“Appeal Br.”), filed Jul. 31, 2007, the Reply Brief (“Reply Br.”), filed Dec. 31, 2007), and the Examiner’s Answer (“Answer”), mailed Oct. 31, 2007.

- device” (Specification 5:21-22) and as including “an optical display device, e.g. a display, which displays map 80 in a digitized form” (Specification 6:11-12).
- FF2 CRTs and LCDs are optical display devices.
- FF3 Appellants’ Specification describes a communications unit 1000, “which receives information regarding traffic disruptions on the routes [*sic*: routes] calculated by calculation unit 400 and transmits it to reproducing device 700 for reproduction” (Specification 5:33-36).
- FF4 Appellants’ Specification describes isolines as “representing boundaries of traffic disruptions having a constant size” (Specification 9:5-6) and isographic diagrams as diagrams “in which the different regions between the isolines are represented using a different color or brightness” (Specification 9:33-35).
- FF5 Appellants proffer a definition of “isoline” as “a line on a map or chart along which there is a constant value” (Reply Br. 3; emphasis in original).
- FF6 Appellants’ Specification does not specifically describe any processor, algorithm, or device for converting information regarding traffic disruptions to isoline or isographic diagram format.
- FF7 Appellants’ claim 25 recites “a reproducing device configured to reproduce the calculated first route and the at least one second route for selection by a user.”
- FF8 Claim 25 includes neither the term “simultaneously” nor any express recitation that the first and second routes are reproduced at the same time.

- FF9 Claim 25 does not require a selection unit for accepting a selection input by a user. Nor does claim 25 specify how selection of a route can be effected by a user.
- FF10 A user can select a displayed route simply by driving the vehicle along the displayed route.
- FF11 Claim 25 recites “the reproducing device is *configured to* reproduce the traffic disruptions” in the form of either isolines or an isographic diagram (emphasis added).
- FF12 Claim 25 does not recite any structure configured to either receive traffic disruption information in isoline or isographic diagram format or to convert traffic disruption information to isoline or isographic diagram format.
- FF13 Mutsuga teaches a navigation system comprising a calculation unit (CPU 4) that calculates a first suggested route using inputs acquired from, *inter alia*, a global positioning system (GPS) receiver 21 and a communication unit 5 comprising a Vehicle Information & Communication System (VICS) receiver 22 or a data transceiver 23 (col. 1, ll. 29-31; col. 4, ll. 61-65; col. 7, ll. 4-22) and a display unit 12 in the form of a color CRT or a color LCD (col. 4, ll. 33-35; col. 7, ll. 16-17). As the vehicle proceeds along the suggested route, Mutsuga’s system continues to monitor VICS traffic information corresponding to the area around the current position of the vehicle and to determine whether a better route is available and updates the display with a new route if one is found (col. 7, l. 40 to col. 9, l. 29; col. 10, ll. 12-19).
- FF14 Appellants concede that Mutsuga teaches the display of a congested route section in Figure 15(A) (Appeal Br. 4).

FF15 Mutsuga's Figure 15(A) illustrates the congested section of a main road in the form of a sawtooth-shaped line and shows a route bypassing the congested section as the optimal route (col. 9, ll. 62-65).

PRINCIPLES OF LAW

When construing claim terminology in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

Limitations not appearing in the claims cannot be relied upon for patentability. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

ANALYSIS

In contesting the Examiner's rejection of claims 16-20, 22-25, and 27-29 as anticipated by Mutsuga, Appellants do not present any separate arguments for dependent claims 16-20, 22-24, and 27-29 apart from independent claim 25. Thus, in accordance with 37 C.F.R. § 41.37(c)(1)(vii) (2007), we select claim 25 as the representative claim to decide this appeal, with claims 16-20, 22-24, and 27-29 standing or falling with claim 25.

Consistent with Appellants' Specification, a reproducing device in accordance with Appellants' invention is simply an optical display device and/or an acoustic reproducing device (FF1). While claim 25 requires that the reproducing device be configured to reproduce a first route and a second route, claim 25 does not expressly require simultaneous display of the first and second routes (FF7, FF8). The further limitation that the reproducing device be configured to reproduce the first and second routes "for selection by a user" does not require simultaneous display of the first and second routes. We reach this conclusion because a first route could be displayed for selection by the user by driving the displayed route and a second route could subsequently be displayed for selection by the user by driving the displayed route (FF9, FF10), thereby satisfying the "for selection by a user" language.

In light of the above, Appellants' argument that Mutsuga fails to teach simultaneous display of the first and second calculated routes is not commensurate with the scope of claim 25, and thus is not persuasive of error in the Examiner's rejection. We find that Mutsuga teaches calculating and displaying a first route and subsequently calculating and displaying a second route (FF13). Mutsuga therefore satisfies the limitation of "a reproducing

device configured to reproduce the calculated first route and the at least one second route for selection by a user.”

The claimed “reproducing device” can be satisfied by an optical device, such as a CRT or LCD (FF1, FF2), and does not require structure for converting traffic disruption information to isoline or isographic diagram format (FF11, FF12). Moreover, claim 25 does not require that the communications unit receive traffic disruption information in any particular format. In fact, Appellants’ Specification describes neither structure for converting information regarding traffic disruptions to isoline or isographic diagram format (FF6) nor structure for receiving information regarding traffic disruptions in isoline or isographic diagram format (FF3). Therefore, claim 25 cannot be construed, consistent with Appellants’ Specification, as requiring that the reproducing device include structure for converting traffic disruption information to isoline or isographic diagram format. Mutsuga’s display unit 12, which is disclosed as either a color CRT or color LCD, is, like Appellants’ optical display, configured to display the graphical information transmitted to it (FF13). Moreover, Mutsuga’s display unit 12 is clearly capable of displaying traffic disruption information in the form of a line (FF14, FF15). Thus, even accepting Appellants’ proffered definitions of isolines and isographic diagram (FF4, FF5), Mutsuga’s display unit 12 is configured to display in isoline or isographic diagram form traffic disruption information transmitted to it in such a format.

In light of the above, Appellants’ argument that Mutsuga does not teach display of isolines or an isographic diagram is not persuasive of error in the Examiner’s rejection. We sustain the rejection of claim 25 and claims 16-20, 22-24, and 27-29, which stand or fall with claim 25.

DECISION

The decision of the Examiner to reject claims 16-20, 22-25, and 27-29 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004